



February 20, 2004

ENGROSSED SENATE BILL No. 322

DIGEST OF SB 322 (Updated February 17, 2004 2:39 pm - DI 69)

Citations Affected: IC 6-1.1; IC 13-23.

Synopsis: Brownfields and underground storage tanks. Establishes a procedure for an owner of, or a person that desires to own, a brownfield to petition the county or municipal fiscal body to waive or reduce the outstanding charges against the brownfield listed on the tax duplicate. Requires the county property tax assessment board of appeals to hold a hearing on the petition and make a recommendation to the fiscal body. Allows the underground storage tank financial assurance board to recommend that the Indiana development finance authority issue its bonds to provide an additional source of revenue to the underground petroleum storage tank excess liability trust fund.

Effective: July 1, 2004.

Gard

(HOUSE SPONSORS — BOTTORFF, WOLKINS, GRUBB, HERRELL)

January 12, 2004, read first time and referred to Committee on Environmental Affairs.
January 22, 2004, reported favorably — Do Pass.
January 26, 2004, read second time, ordered engrossed. Engrossed.
January 29, 2004, read third time, passed. Yeas 47, nays 0.

HOUSE ACTION

February 4, 2004, read first time and referred to Committee on Environmental Affairs.
February 19, 2004, amended, reported — Do Pass.

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ES 322—LS 7214/DI 52+



February 20, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 322

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation and the environment.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-1.1-45 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2004]:

4 **Chapter 45. Brownfield Tax Reduction or Waiver**

5 **Sec. 1. As used in this chapter:**

6 (1) "board" refers to the county property tax assessment
7 board of appeals;

8 (2) "brownfield" has the meaning set forth in IC 13-11-2-19.3;

9 (3) "contaminant" has the meaning set forth in IC 13-11-2-42;

10 (4) "delinquent tax liability" means:

11 (A) delinquent property taxes;

12 (B) delinquent special assessments;

13 (C) interest;

14 (D) penalties; and

15 (E) costs;

16 assessed against a brownfield and entered on the tax duplicate
17 that a person seeks to have waived or reduced by filing a

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petition under section 2 of this chapter;

(5) "department" refers to the department of environmental management, unless the specific reference is to the department of local government finance; and

(6) "fiscal body" refers to the fiscal body of:

(A) the city if the brownfield is located in a city;

(B) the town if the brownfield is located in a town; or

(C) the county if the brownfield is not located in a city or town.

Sec. 2. A person that owns or desires to own a brownfield may file a petition with the county auditor seeking a reduction or waiver of the delinquent tax liability. The petition must:

(1) be on a form:

(A) prescribed by the state board of accounts; and

(B) approved by the department of local government finance;

(2) state:

(A) the amount of the delinquent tax liability; and

(B) when the delinquent tax liability arose;

(3) describe:

(A) the manner in which; and

(B) when;

the petitioner acquired or proposes to acquire the brownfield;

(4) describe the conditions existing on the brownfield that have prevented the sale or the transfer of title to the county;

(5) describe the plan of the petitioner for:

(A) addressing any contaminants on the brownfield; and

(B) the intended use of the brownfield;

(6) include a statement from the department that the property is a brownfield;

(7) state whether the petitioner:

(A) has had an ownership interest in an entity that contributed; or

(B) has contributed;

to the contaminant or contaminants on the brownfield;

(8) state whether any part of the delinquent tax liability can reasonably be collected from a person other than the petitioner;

(9) state that the petitioner seeks:

(A) a waiver of the delinquent tax liability; or

(B) a reduction of the delinquent tax liability in a specified amount; and

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(10) be accompanied by a fee in an amount established by the county auditor for:

(A) completing a title search; and

(B) processing the petition.

Sec. 3. On receipt of a petition under section 2 of this chapter, the county auditor shall determine whether the petition is complete. If the petition is not complete, the county auditor shall return the petition to the petitioner and describe the defects in the petition. The petitioner may correct the defects and file the completed petition with the county auditor. On receipt of a complete petition, the county auditor shall forward a copy of the complete petition to:

(1) the assessor of the township in which the brownfield is located;

(2) the owner, if different from the petitioner;

(3) all persons that have, as of the date of the filing of the petition, a substantial property interest of public record in the brownfield;

(4) the board;

(5) the fiscal body; and

(6) the department.

Sec. 4. On receipt of a complete petition under section 3 of this chapter, the board shall at its earliest opportunity conduct a public hearing on the petition. The board shall give notice of the date, time, and place fixed for the hearing:

(1) by mail to:

(A) the petitioner;

(B) the owner, if different from the petitioner;

(C) all persons that have, as of the date the petition was filed, a substantial interest of public record in the brownfield; and

(D) the assessor of the township in which the brownfield is located; and

(2) under IC 5-3-1.

Sec. 5. (a) The board may recommend that the fiscal body grant the petition or that the fiscal body approve a reduction of the delinquent tax liability in an amount less than the amount sought by the petitioner if the board determines that:

(1) the brownfield was acquired or is proposed to be acquired as a result of:

(A) sale or abandonment in a bankruptcy proceeding;

(B) foreclosure or a sheriff's sale;

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- (C) receivership; or
- (D) purchase from a political subdivision;
- (2) the plan referred to in section 2(5) of this chapter is in the best interest of the community;
- (3) the waiver or reduction of the delinquent tax liability:
 - (A) is in the public interest; and
 - (B) will facilitate development or use of the brownfield;
- (4) the petitioner:
 - (A) has not had an ownership interest in an entity that contributed; and
 - (B) has not contributed;
- to the contaminant or contaminants on the brownfield;
- (5) the department has determined that the property is a brownfield;
- (6) if the petitioner is the owner of the brownfield, the delinquent tax liability sought to be waived or reduced arose before the petitioner's acquisition of the brownfield; and
- (7) no part of the delinquent tax liability can reasonably be collected from a person other than the owner of the brownfield.
- (b) After the hearing and completion of any additional investigation of the brownfield or of the petitioner that the board considers necessary, the board shall:
 - (1) give notice, by mail, to the parties listed in section 4(1) of this chapter of the board's recommendation that the fiscal body:
 - (A) deny the petition;
 - (B) waive the delinquent tax liability; or
 - (C) reduce the delinquent tax liability by a specified amount; and
 - (2) forward to the fiscal body a copy of:
 - (A) the board's recommendation; and
 - (B) the documents submitted to or collected by the board at the public hearing or during the course of the board's investigation of the brownfield or of the petitioner.
- Sec. 6. (a) The fiscal body shall at a regularly scheduled meeting:
 - (1) review the petition and all other materials submitted by the board under section 5 of this chapter; and
 - (2) determine whether to:
 - (A) deny the petition;
 - (B) waive the delinquent tax liability; or

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1 (C) reduce the delinquent tax liability by a specified
2 amount.

3 The fiscal body may reduce the delinquent tax liability in an
4 amount that differs from the amount of reduction recommended
5 by the board.

6 (b) The fiscal body's determination to waive or reduce the
7 delinquent tax liability under subsection (a) is subject to the
8 limitation in section 7(f)(2) of this chapter.

9 Sec. 7. (a) The fiscal body shall:

10 (1) publish notice under IC 5-3-1 of its determination under
11 section 6 of this chapter; and

12 (2) give notice of its determination under section 6 of this
13 chapter and the right to seek an appeal of the determination
14 by mail to:

15 (A) the petitioner;

16 (B) the owner, if different from the petitioner;

17 (C) all persons that have, as of the date the petition was
18 filed under section 2 of this chapter, a substantial property
19 interest of public record in the brownfield;

20 (D) the assessor of the township in which the brownfield is
21 located;

22 (E) the board; and

23 (F) the county auditor.

24 (b) A person aggrieved by a determination of the fiscal body
25 under section 6 of this chapter may obtain an additional review by
26 the fiscal body and a public hearing by filing a petition for review
27 with the county auditor of the county in which the brownfield is
28 located not more than thirty (30) days after the fiscal body gives
29 notice of the determination under subsection (a). The county
30 auditor shall transmit the petition to the fiscal body not more than
31 ten (10) days after the petition is filed.

32 (c) On receipt by the fiscal body of a petition for review, the
33 fiscal body shall set a date, time, and place for a hearing. At least
34 ten (10) days before the date fixed for the hearing, the fiscal body
35 shall give notice, by mail, of the date, time, and place fixed for the
36 hearing to:

37 (1) the person that filed the appeal;

38 (2) the petitioner;

39 (3) the owner, if different from the petitioner;

40 (4) all persons that have, as of the date the petition is filed, a
41 substantial interest of public record in the brownfield;

42 (5) the assessor of the township in which the brownfield is

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located;

(6) the board; and

(7) the county auditor.

(d) After the hearing, the fiscal body shall give the parties listed in subsection (c) notice by mail of the final determination of the fiscal body. The fiscal body's final determination under this subsection is subject to the limitation in subsection (f)(2).

(e) The petitioner under section 2 of this chapter shall provide to the county auditor reasonable proof of ownership of the brownfield:

(1) if a petition is not filed under subsection (b), at least thirty (30) days but not more than one hundred twenty (120) days after notice is given under subsection (a); or

(2) after notice is given under subsection (d) but not more than ninety (90) days after notice is given under subsection (d).

(f) The county auditor:

(1) shall reduce or remove the delinquent tax liability on the tax duplicate in the amount stated in:

(A) if a petition is not filed under subsection (b), the determination of the fiscal body under section 6 of this chapter; or

(B) the final determination of the fiscal body under this section;

not more than thirty (30) days after receipt of the proof of ownership required in subsection (e); and

(2) may not reduce or remove any delinquent tax liability on the tax duplicate if the petitioner under section 2 of this chapter fails to provide proof of ownership as required in subsection (e).

SECTION 2. IC 13-23-11-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. If the board finds that it is in the public interest to increase the level of funding of the underground petroleum storage tank excess liability trust fund established by IC 13-23-7-1, the board may recommend that the Indiana development finance authority provide a source of revenue to the fund under IC 4-4-11.2.

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COMMITTEE REPORT

Madam President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 322, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 322 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 6, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 322, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning taxation and the environment.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-1.1-45 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 45. Brownfield Tax Reduction or Waiver

Sec. 1. As used in this chapter:

- (1) "board" refers to the county property tax assessment board of appeals;
- (2) "brownfield" has the meaning set forth in IC 13-11-2-19.3;
- (3) "contaminant" has the meaning set forth in IC 13-11-2-42;
- (4) "delinquent tax liability" means:
 - (A) delinquent property taxes;
 - (B) delinquent special assessments;
 - (C) interest;
 - (D) penalties; and
 - (E) costs;

assessed against a brownfield and entered on the tax duplicate that a person seeks to have waived or reduced by filing a petition under section 2 of this chapter;

- (5) "department" refers to the department of environmental management, unless the specific reference is to the department of local government finance; and
- (6) "fiscal body" refers to the fiscal body of:

- (A) the city if the brownfield is located in a city;
- (B) the town if the brownfield is located in a town; or
- (C) the county if the brownfield is not located in a city or town.

Sec. 2. A person that owns or desires to own a brownfield may file a petition with the county auditor seeking a reduction or waiver of the delinquent tax liability. The petition must:

- (1) be on a form:
 - (A) prescribed by the state board of accounts; and

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- (B) approved by the department of local government finance;
- (2) state:
 - (A) the amount of the delinquent tax liability; and
 - (B) when the delinquent tax liability arose;
- (3) describe:
 - (A) the manner in which; and
 - (B) when;
 the petitioner acquired or proposes to acquire the brownfield;
- (4) describe the conditions existing on the brownfield that have prevented the sale or the transfer of title to the county;
- (5) describe the plan of the petitioner for:
 - (A) addressing any contaminants on the brownfield; and
 - (B) the intended use of the brownfield;
- (6) include a statement from the department that the property is a brownfield;
- (7) state whether the petitioner:
 - (A) has had an ownership interest in an entity that contributed; or
 - (B) has contributed;
 to the contaminant or contaminants on the brownfield;
- (8) state whether any part of the delinquent tax liability can reasonably be collected from a person other than the petitioner;
- (9) state that the petitioner seeks:
 - (A) a waiver of the delinquent tax liability; or
 - (B) a reduction of the delinquent tax liability in a specified amount; and
- (10) be accompanied by a fee in an amount established by the county auditor for:
 - (A) completing a title search; and
 - (B) processing the petition.

Sec. 3. On receipt of a petition under section 2 of this chapter, the county auditor shall determine whether the petition is complete. If the petition is not complete, the county auditor shall return the petition to the petitioner and describe the defects in the petition. The petitioner may correct the defects and file the completed petition with the county auditor. On receipt of a complete petition, the county auditor shall forward a copy of the complete petition to:

- (1) the assessor of the township in which the brownfield is located;

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- (2) the owner, if different from the petitioner;
- (3) all persons that have, as of the date of the filing of the petition, a substantial property interest of public record in the brownfield;
- (4) the board;
- (5) the fiscal body; and
- (6) the department.

Sec. 4. On receipt of a complete petition under section 3 of this chapter, the board shall at its earliest opportunity conduct a public hearing on the petition. The board shall give notice of the date, time, and place fixed for the hearing:

- (1) by mail to:
 - (A) the petitioner;
 - (B) the owner, if different from the petitioner;
 - (C) all persons that have, as of the date the petition was filed, a substantial interest of public record in the brownfield; and
 - (D) the assessor of the township in which the brownfield is located; and
- (2) under IC 5-3-1.

Sec. 5. (a) The board may recommend that the fiscal body grant the petition or that the fiscal body approve a reduction of the delinquent tax liability in an amount less than the amount sought by the petitioner if the board determines that:

- (1) the brownfield was acquired or is proposed to be acquired as a result of:
 - (A) sale or abandonment in a bankruptcy proceeding;
 - (B) foreclosure or a sheriff's sale;
 - (C) receivership; or
 - (D) purchase from a political subdivision;
- (2) the plan referred to in section 2(5) of this chapter is in the best interest of the community;
- (3) the waiver or reduction of the delinquent tax liability:
 - (A) is in the public interest; and
 - (B) will facilitate development or use of the brownfield;
- (4) the petitioner:
 - (A) has not had an ownership interest in an entity that contributed; and
 - (B) has not contributed;
- to the contaminant or contaminants on the brownfield;
- (5) the department has determined that the property is a brownfield;

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- (6) if the petitioner is the owner of the brownfield, the delinquent tax liability sought to be waived or reduced arose before the petitioner's acquisition of the brownfield; and
- (7) no part of the delinquent tax liability can reasonably be collected from a person other than the owner of the brownfield.

(b) After the hearing and completion of any additional investigation of the brownfield or of the petitioner that the board considers necessary, the board shall:

- (1) give notice, by mail, to the parties listed in section 4(1) of this chapter of the board's recommendation that the fiscal body:
 - (A) deny the petition;
 - (B) waive the delinquent tax liability; or
 - (C) reduce the delinquent tax liability by a specified amount; and
- (2) forward to the fiscal body a copy of:
 - (A) the board's recommendation; and
 - (B) the documents submitted to or collected by the board at the public hearing or during the course of the board's investigation of the brownfield or of the petitioner.

Sec. 6. (a) The fiscal body shall at a regularly scheduled meeting:

- (1) review the petition and all other materials submitted by the board under section 5 of this chapter; and
- (2) determine whether to:
 - (A) deny the petition;
 - (B) waive the delinquent tax liability; or
 - (C) reduce the delinquent tax liability by a specified amount.

The fiscal body may reduce the delinquent tax liability in an amount that differs from the amount of reduction recommended by the board.

(b) The fiscal body's determination to waive or reduce the delinquent tax liability under subsection (a) is subject to the limitation in section 7(f)(2) of this chapter.

Sec. 7. (a) The fiscal body shall:

- (1) publish notice under IC 5-3-1 of its determination under section 6 of this chapter; and
- (2) give notice of its determination under section 6 of this chapter and the right to seek an appeal of the determination by mail to:

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- (A) the petitioner;
- (B) the owner, if different from the petitioner;
- (C) all persons that have, as of the date the petition was filed under section 2 of this chapter, a substantial property interest of public record in the brownfield;
- (D) the assessor of the township in which the brownfield is located;
- (E) the board; and
- (F) the county auditor.

(b) A person aggrieved by a determination of the fiscal body under section 6 of this chapter may obtain an additional review by the fiscal body and a public hearing by filing a petition for review with the county auditor of the county in which the brownfield is located not more than thirty (30) days after the fiscal body gives notice of the determination under subsection (a). The county auditor shall transmit the petition to the fiscal body not more than ten (10) days after the petition is filed.

(c) On receipt by the fiscal body of a petition for review, the fiscal body shall set a date, time, and place for a hearing. At least ten (10) days before the date fixed for the hearing, the fiscal body shall give notice, by mail, of the date, time, and place fixed for the hearing to:

- (1) the person that filed the appeal;
- (2) the petitioner;
- (3) the owner, if different from the petitioner;
- (4) all persons that have, as of the date the petition is filed, a substantial interest of public record in the brownfield;
- (5) the assessor of the township in which the brownfield is located;
- (6) the board; and
- (7) the county auditor.

(d) After the hearing, the fiscal body shall give the parties listed in subsection (c) notice by mail of the final determination of the fiscal body. The fiscal body's final determination under this subsection is subject to the limitation in subsection (f)(2).

(e) The petitioner under section 2 of this chapter shall provide to the county auditor reasonable proof of ownership of the brownfield:

- (1) if a petition is not filed under subsection (b), at least thirty (30) days but not more than one hundred twenty (120) days after notice is given under subsection (a); or

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(2) after notice is given under subsection (d) but not more than ninety (90) days after notice is given under subsection (d).

(f) The county auditor:

(1) shall reduce or remove the delinquent tax liability on the tax duplicate in the amount stated in:

(A) if a petition is not filed under subsection (b), the determination of the fiscal body under section 6 of this chapter; or

(B) the final determination of the fiscal body under this section;

not more than thirty (30) days after receipt of the proof of ownership required in subsection (e); and

(2) may not reduce or remove any delinquent tax liability on the tax duplicate if the petitioner under section 2 of this chapter fails to provide proof of ownership as required in subsection (e)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 322 as printed January 23, 2004.)

BOTTORFF, Chair

Committee Vote: yeas 12, nays 0.

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